

REMARKS

Claims 1-43 were previously pending in this application. By this amendment, Applicants are canceling claim 1 without prejudice or disclaimer. Claims 2-4, 7, 11, 21, 23-25 and 42 have been amended. No new claims have been added. As a result claims 2-43 are pending for examination with claims 2-4, 21, 23-25 and 42 being independent claims. No new matter has been added. Reconsideration is respectfully requested.

Allowable Subject Matter

Claims 21, 22, 42 and 43 were indicated as containing allowable subject matter. Claims 21 and 42 have been rewritten in independent form to include the subject matter of independent claims 4 and 25, respectively. Accordingly, claims 21 and 42 are in condition for allowance. Claims 22 and 43 depend from claims 21 and 42, respectively, and are allowable for at least the same reasons.

Claim Objections

Claims 4, 7, and 11 were objected to based on informalities. Each of claims 4, 7 and 11 have been amended to overcome any informalities and withdrawal of said objections is respectfully requested.

Double Patenting Rejection

In the Office Action, claim 1 was provisionally rejected based on the doctrine of double-patenting. Claim 1 has been canceled. Accordingly, the rejection of claim 1 is moot.

Rejections Under 35 U.S.C. §102

Claims 2, 4-8, 10-12, 15-18, 23, 25-29, 31-33 and 36-39 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 5,789,694 to Reber et al. (hereinafter Reber).

Reber discloses a food storage apparatus including a container for containing a food item, a first electrical component associated with the container, and a second electrical component associated with a cover of the container (abstract). The first component and the second component communicate to monitor a food item (abstract). Reber further discloses that an

indicator 36 may provide audible or visual indication of a condition of the food item (col. 4, lines 6-8).

Regarding claims 2, 4-8, 10-12 and 15-18

Each of independent claims 2 and 4 has been amended to recite a package indicator configured to control a first LED which is adapted to produce light having a first spectrum, and a second LED which is adapted produce light having a second spectrum. Additionally, each of claims 2 and 4 has been further amended to recite that the package indicator is capable of producing light of at least three different colors.

Reber does not disclose or suggest an apparatus including a first LED adapted to produce light having a first spectrum, and a second LED adapted to produce light having a second spectrum. Furthermore, Reber certainly does not disclose or suggest an apparatus capable of producing light of at least three different colors. Accordingly, claims 2 and 4 are patentable over Reber. Claims 5-8, 10-12 and 15-18 depend from claim 4 and are patentable for at least the same reasons as claim 4.

Thus, withdrawal of these rejections is respectfully requested.

Regarding claims 23, 25-29, 31-33 and 36-39

Each of independent claims 23 and 25 has been amended to recite a method of providing a package indicator comprising providing a first LED which is adapted to produce light having a first spectrum, and providing a second LED which is adapted to produce light having a second spectrum; and each of claims 23 and 25 have been for amended to recite a step of controlling the first LED and the second LED to produce light of at least three different perceivable colors of light.

Reber does not disclose or suggest providing a first LED adapted to produce light having a first spectrum, and a second LED adapted to produce light having a second spectrum. Furthermore, Reber certainly does not disclose or suggest controlling LEDs to produce at least three different perceivable colors of light. Accordingly, claims 23 and 25 are patentable over Reber. Claims 26-29, 31-33 and 36-39 depend from claim 25 and are patenable for at least the same reasons as claim 25.

Thus, withdrawal of these rejections is respectfully requested.

Rejections Under 35 U.S.C. §103

A. Claims 1, 3, 13, 14, 24, 34 and 35 are patentable over Reber in view of Parkhurst

Claims 1, 3, 13, 14, 24, 34 and 35 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Reber in view of U.S. Patent No. 5,412,372 to Parkhurst, et al. (hereinafter Parkhurst). Applicants traverse these rejections. However, the rejection of claim 1 now is moot in light of the cancellation of claim 1 as a result of the double patenting rejection discussed above.

Parkhurst discloses a portable medication dispenser that is intended to aid and monitor regimen-conforming use of medication provided in a so-called blister package (abstract). Parkhurst discloses that a blister package and a sensor sheet may be loaded into a compact housing containing supervisory electronics, a visual indicator and an audible alarm (abstract). When a medication is ejected from the blister pack, an electrical or optical parameter associated with a corresponding region of the sensor sheet is altered permitting the control circuitry to monitor dispensing (abstract). Regimen-conforming use may then be reported remotely through an optical or electrical interface (abstract).

In the text corresponding to FIG. 4, to which the Office Action refers, Parkhurst discloses that the housing may include an LED which illuminates one color (such as red) when it is time to administer medication and another color (such as green) when it is not yet time to administer medication (col. 7, line 47-55). Parkhurst further discloses that a low-battery light may be included to alert a user to replace or recharge a battery (col. 7, line 55-58).

I. The combination of Reber and Parkhurst is improper

The Office Action alleges, on page 6, that Reber discloses an apparatus as claimed “substantially as explained above except for an illumination system being gradually changed to a selected color or red with the passage of time.” The Applicants are uncertain what the term “as explained above” refers to, but proceed with the understanding that Reber is applied as it was applied to claims 1 under 35 U.S.C. § 103. That is, the Applicants understand the Office Action to allege that Reber discloses in FIG. 5 “a method of providing information which comprises a

receiver 64 (sic) for receiving an information signal from [a] tag indicating device 32, providing an LED illumination device 36 with an inherent input connection to receive an illumination control signal, providing a processor 62, capable of converting the information signal into the illumination control signal and communicating said control signal to the input connection wherein the illumination device 36 changes to provide a numerical indication or graphic indication corresponding to the information signal ." The Office Action acknowledges that Reber fails to disclose two or more LEDs.

Further, the Office Action alleges that Parkhurst discloses in FIGs. 4 and 10 a package indicator system having two or more indicator lights (that may be LEDs) to indicate whether it is time to administer a medication. The Office Action further alleges that it would have been obvious to a person having ordinary skill in the art to provide two or more LEDs as taught by Parkhurst into the Reber type package indicator. The Office Action states that such a modification "can be done by replacing the Reber's LED element with the Parkhurst's two or more LEDs (sic)." The Office Action concludes that it would allow, upon a particular illumination, an indicating control that is easy to use, inexpensive and more accurate for monitoring functions. The Applicants submit that the above combination of Reber and Parkhurst is improper.

There is no suggestion in the art of record that Reber should be modified in the manner suggested in the Office Action. While the Office Action alleges that Reber and Parkhurst "can " be combined, MPEP §2143.01 specifically states that "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990)." Accordingly, Office Action allegation that Reber can be so modified is not adequate motivation to modify Reber.

Additionally, the Office Action's allegation that "[the combination] would allow upon a particular illumination an indicating control that is easy to use, inexpensive and more accurate for monitoring functions" does not appear to be taught or suggested by Reber or Parkhurst or any art of record; rather this suggestion is derived from the Applicants' application. Therefore, the stated motivation is hindsight reasoning. Accordingly, the combination of Reber and Parkhurst

as set forth in the Office Action is improper, and any rejection based on said combination should be withdrawn.

II. Regarding claim 1

As stated above, claim 1 has been canceled. Accordingly, the rejection of claim 1 is moot.

III. Regarding claim 3

Even assuming that the combination of Reber and Parkhurst were proper, which it is not, claim 3 is patentable over the combination. Claim 3 has been amended to recite an apparatus comprising "at least one LED ... capable of emitting at least first light having a first spectrum and second light having a second spectrum, the first spectrum being different than the second spectrum ... and the first light and the second light being independently controllable such that at least three different colors may be generated by the at least one LED."

As stated above, Reber does not disclose or suggest an apparatus capable including a first LED adapted to produce light having a first spectrum, and a second LED adapted to produce light having a second spectrum, and Reber certainly does not disclose or suggest an apparatus capable of producing light of at least three different colors. Parkhurst does not overcome this defect of Parkhurst. At most, Parkhurst disclose that *two* different colors, only one of which is displayed at a given time, may be used to indicate regimen-conforming use of medication.

Therefore, claim 3 is patentable over the indicated combination of Reber and Parkhurst. Accordingly, withdrawal of this rejection is respectfully requested.

IV. Regarding claims 13-14 and 34-35

Even assuming that the combination of Reber and Parkhurst were proper, which it is not, claims 13-14 and 34-35 are patentable over the combination. In particular, claims 13-14 and claims 34-35 depend from claims 4 and 25, respectively, which are patentable over the combination of Reber and Parkhurst for the reasons discussed above.

Applicants wish to note that, on page 6 of the Office Action, regarding claims 13, 14, 34 and 35, the Office Action alleges that Parkhurst discloses in FIG. 4 and 10 an indicating system

having an illumination system 132 being gradually changed to a selected color (red or green) with the passage of time (see col. 7, lines 46-54). The Applicants respectfully point out that Parkhurst at col. 7, lines 46-54, does not disclose gradually changed to a selected color (red or green) with the passage of time, as alleged in the Office Action. Instead, said portion of Parkhurst merely states that the illumination is changed from one color to another. Accordingly, only red or green light is provided at any given time.

V. Regarding claim 24

Even assuming that the combination of Reber and Parkhurst were proper, which it is not, claim 24 is patentable over the combination. Claim 24 has been amended to recite a method comprising steps of "providing at least one LED ... capable of emitting at least first light having a first spectrum and second light having a second spectrum, the first spectrum being different than the second spectrum" and "controlling the at least one LED in response to the control signals to produce at least three different perceivable colors of light."

As stated above, Reber does not disclose or suggest providing at least one LED capable of emitting at least first light having a first spectrum and second light having a second spectrum, the first spectrum being different than the second spectrum, and Reber certainly does not disclose or suggest a method of controlling the at least one LED in response to control signals to produce at least three different perceivable colors of light. Parkhurst does not overcome this defect of Reber. As stated above, at most Parkhurst discloses that two different colors, only one of which is displayed at a given time, may be used to indicate regimen-conforming use of medication.

Therefore, claim 24 is patentable over the indicated combination of Reber and Parkhurst. Accordingly, withdrawal of this rejection is respectfully requested.

B. Claims 9 and 30 are patentable over Reber in view of Kazar

Claims 9 and 30 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Reber as applied above, in view of U.S. Patent No. 4,870,325 to Kazar, et al. (hereinafter Kazar). The Applicants traverse these rejections. In any case, these claims depend from claims

4 and 25, respectively, and are therefore patentable for at least the same reasons as claims 4 and 25. Withdrawal of the rejections of claims 9 and 30 is respectfully requested.

The Applicants respectfully point out that independent claims 4 and 25 were rejected over Reber in view of Parkhurst, while claims 9 and 30, which depend from claims 4 and 25, respectfully, are rejected only over Reber in view of Kazar. The Applicants further point out that because claims 9 and 30 depend from claims 4 and 25, and therefore include all of the limitations of claims 4 and 25, it would appear to be necessary that the rejections of claims 9 and 30 include Parkhurst, not just Reber in view of Kazar. Accordingly, the rejections of claims 9 and 30 appear to be deficient.

C. Claims 19-20 and 40-41 are patentable over Reber in view of Moore

The claims 19-20 and 40-41 were rejected under 35 U.S.C. §103(a) as being unpatentable as applied above, in view of U.S. Patent No. 5,592,561 to Moore, et al. (hereinafter Moore). The Applicants traverse these rejections. In any case, these claims depend from claims 4 and 25, respectively, and are therefore patentable for at least the same reasons as claims 4 and 25. Withdrawal of the rejections of claims 19-20 and 40-41 is respectfully requested.

The Applicants respectfully point out that independent claims 4 and 25 were rejected over Reber in view of Parkhurst, while claims 19-20 and 40-41, which depend from claims 4 and 25, respectfully, are rejected only over Reber in view of Moore. The Applicants further point out that because claims 19-20 and 40-41 depend from claims 4 and 25, and therefore include all of the limitations of claims 4 and 25, it would appear to be necessary that the rejections of claims 19-20 and 40-41 include Parkhurst, not just Reber in view of Moore. Accordingly, the rejections of claims 19-20 and 40-41 appear to be deficient.

CONCLUSION

In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 50/2762.

Respectfully submitted,
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